

The John Curtin Institute for Public Policy

Corruption and Anti- Corruption in China

HE Jiahong

Sept. 9, 2016

Self-introduction

- Professor and Director of the Center for anti-Corruption and Rule of Law, RUC
 - Specially Invited Adviser, the Supreme People's Court
 - Expert Adviser, the Supreme People's Procuratorate



A part-time prosecutor

- Deputy Director General, Department of Anti-dereliction of Duty and Infringement on Human Rights,
- Supreme People's Procuratorate, PRC
- (2006-2008)



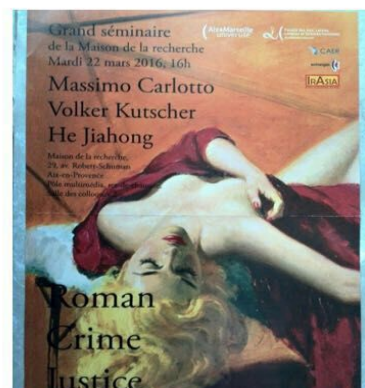
Jurist and Novelist



何家弘

法兰西文化之旅

pairs
3.17-3.25



HE Jiahong (何家弘)

Justice pénale et erreurs judiciaires en Chine
(刑事诉讼十大司法误区)



POSTERLABS

Travel is about the gorgeous feeling of
teetering in the unknown

Lundi 21 Mars 2016
à 17h30

Amphi Mistral
Faculté de Droit et de Science Politique

"La justice pénale
et les erreurs judiciaires en Chine"

par HE Jiahong

Professeur de Droit à la Faculté de Droit de Renmin University of China à Pékin,
spécialiste en droit pénal chinois, systèmes judiciaires et criminalistiques.
Auteur de romans policiers traduits en français, anglais, italien et espagnol.

« Mon histoire d'amour avec la
littérature »

Intervenant : HE Jiahong 何家弘
Professeur de droit à l'Université Renmin de Pékin
Auteur de romans policiers



MERcredi 23 MARS 2016 à 13H00
Bâtiment G, salle G104
Université Paul Valéry, Montpellier 3 Route de Mende
Tram : ligne 1, arrêt St-Eloi

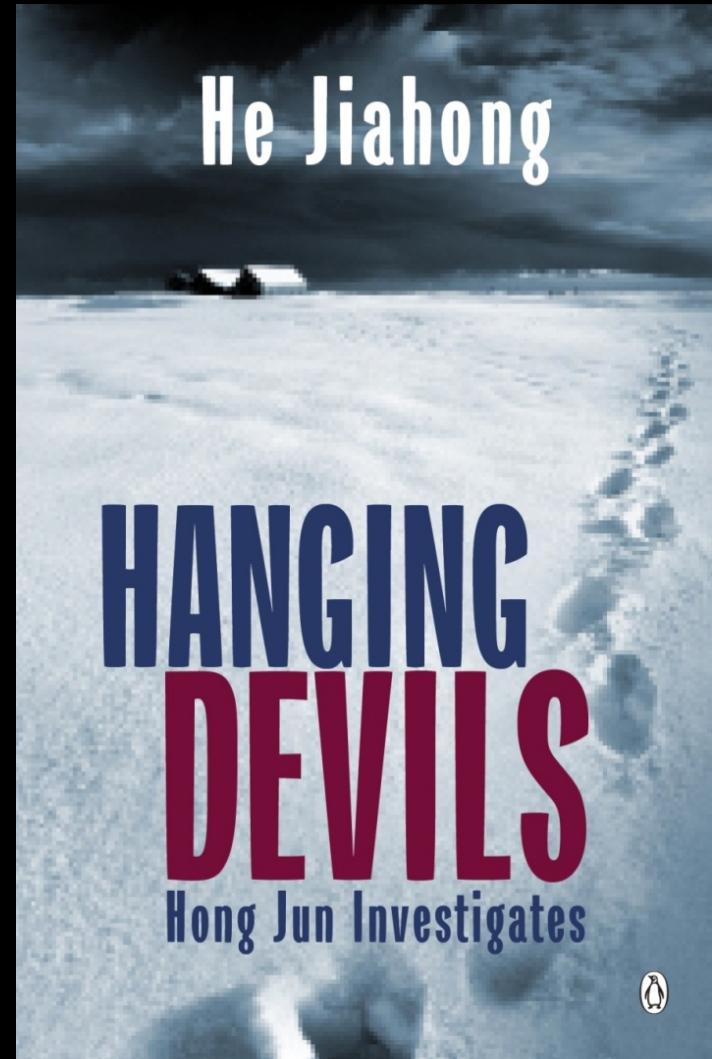
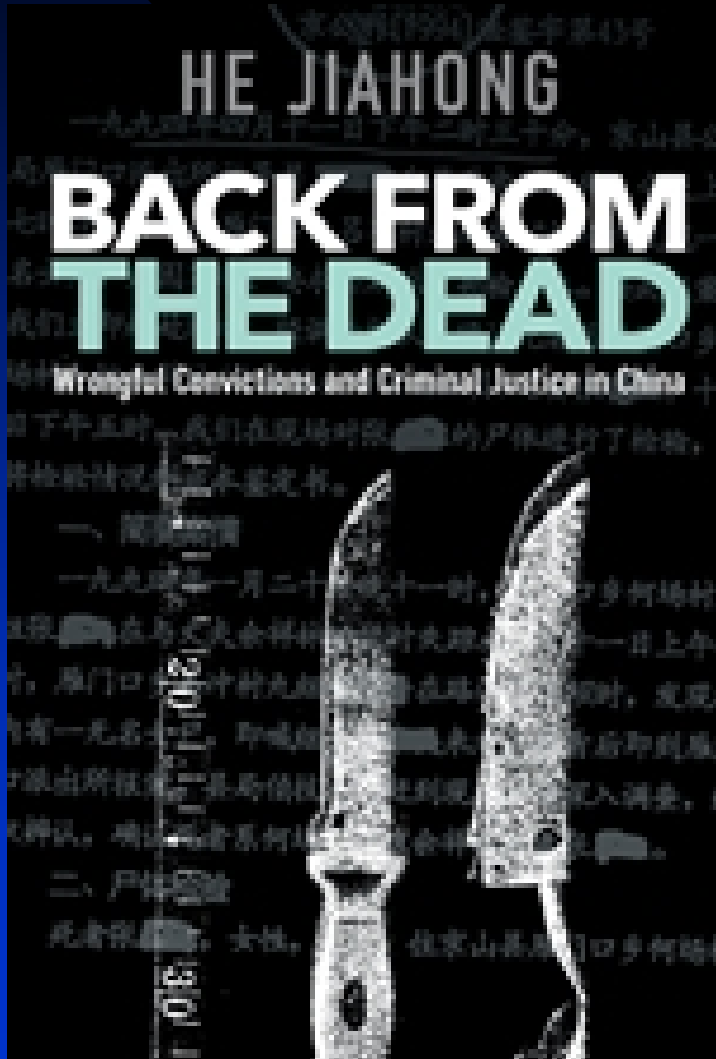
Signatures
vendredi 18 mars

He Jiahong
de 10h à 12h

Virginie Martin
de 16h à 18h

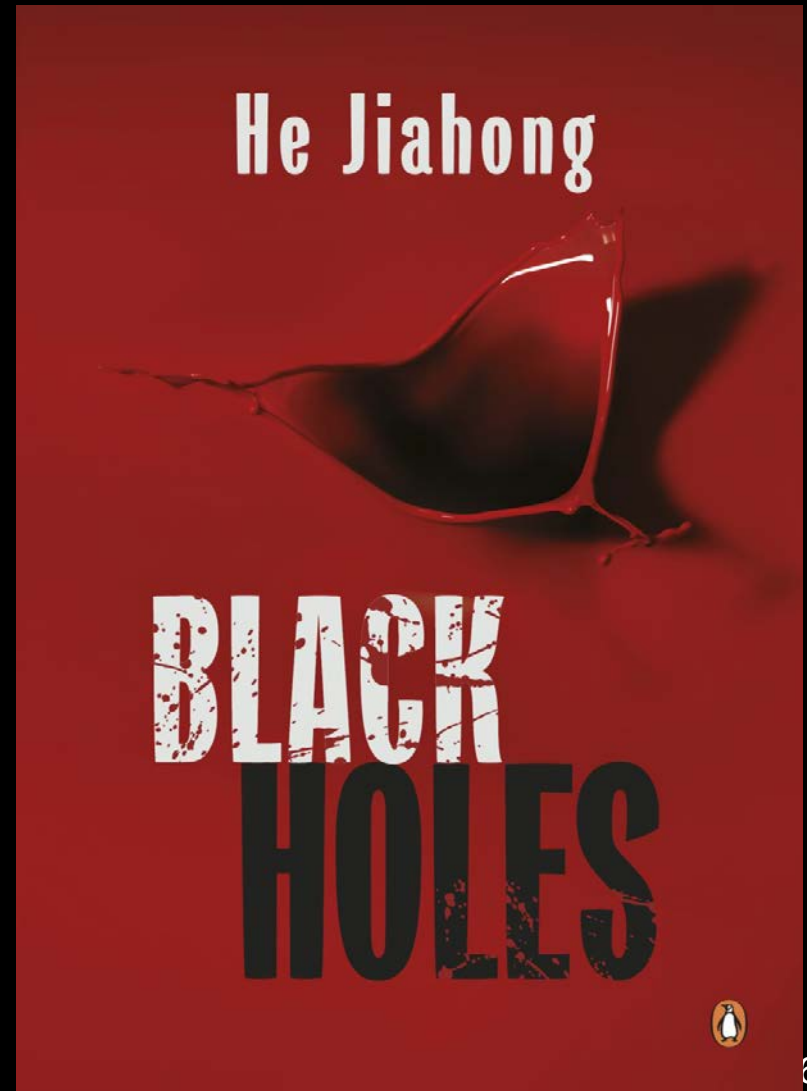


Books about Wrongful Conviction



A novel about corruption

- Black Holes was published in English by Penguin Group in September, 2014.
- It tells a story about human nature, corruption and justice.



Financial Times & Beijing Review

Over a buffet lunch in Beijing, the Chinese law professor and novelist tells Tom Mitchell about his 'nice dream' for communism, tackling corruption—and how he won over his wife's family

Professor He Jiahong, who teaches criminal law and forensic linguistics at Renmin University in Beijing, has written government officials at Renmin University in Beijing, who invited him to join him at a seminar he is holding there before he goes to lunch. Although he is a professor, he is not in the middle of the room, and he is not wearing a suit. He is wearing a blue jacket and three other visiting faculty members, who are sitting around a table with the professor with a debate on a Chinese legal expert, instead there are two of them peered with students.

Wearing a black shirt, black vest and tie, the 45-year-old professor is smiling as he talks to the students and a small group of journalists with a quiet authority. A frequent commentator on China's legal system, he is also well known as the author of five popular crime novels, including a bestselling one, that have been translated into English, French, Spanish and Italian. The third identity is the source of one of the professor's favorite topics, which he turns to the seminar and repeats during lunch. "I am not only a writer but a lawyer. I often have novel ideas about law."

At a time when the seminar ends, we leave the law school and head for a restaurant in the building next door. It is a lovely, quiet place with a beautiful view of the city and the harbor. The restaurant is a quiet place with a beautiful view of the city and the harbor. The restaurant is a quiet place with a beautiful view of the city and the harbor. The restaurant is a quiet place with a beautiful view of the city and the harbor.



Lunch with the FT He Jiahong
I have novel ideas about the law'

He Jiahong is a 45-year-old former work in a local office to continue work on communication. A little longer, again inspired through the corruption that had first made him so successful, when he is meeting that admission.

Prof He's dark suit and glasses that, when he is not wearing them, he is not wearing them to get his chair around in his side of the room. He is not wearing them to get his chair around in his side of the room. He is not wearing them to get his chair around in his side of the room.

They said they would only agree to meet him if he took and passed China's college entrance exam, which by that time had been open to all citizens regardless of their political background. It was a daunting prospect, particularly in 1978, when an entire generation of students whose education had been interrupted by the Cultural Revolution completed admission.

"Before that I was just thinking about my dream of being a writer," he says. "But after a long time, I made the decision that I would try for my dream. I passed it and I was very happy. I passed it and I was very happy. I passed it and I was very happy."

In a second round of law, China's exam administrators allowed He to Renmin University's law department. He was one of the first students to make the economics center he had initially intended to attend.

"The next I heard about law, the more important I realized that this is my career," he says. "I see my career, and I see my career, and I see my career."

Only after completing his law at Northwestern and receiving a staff teaching position at Renmin University's law school did he start writing his novels. He says he was inspired by authors from South Korea, the former USSR, and the author of legal thrillers such as Frederick Forsyth (1977) and Harlan Coben (2007).

"When I was those years I thought they were law books but they were novels, and I thought I should write them. Who is the author of the book? Who is the author of the book? Who is the author of the book?"

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Black Holes and Sunshine Laws

Inside the chambers of China's answer to John Grisham By Eric Daly

He Jiahong, it seems, can work a room as well as he can hold readers on tenterhooks. On March 26, the highly respected legal expert and novelist opens the 2015 Beijing Bookworm Literary Festival discussion marking the release of his second English-language novel, *Black Holes*, with the qualifier, "I can speak Chinese as well as English." The audience laughs.

Black Holes is a translation of the second of five novels, originally published in Chinese and featuring crusading lawyer Hong Jun. Meeting He the day before in his book-piled office located within the Beijing-based Renmin University of China's labyrinthine Mingde complex, he is the least self-conscious literary writer imaginable, maintaining that he is no expert in the field of literature.

The professor is being modest. Judging from *Black Holes* (reviewed on page 45), he is a confident writer with an assured grasp of plot and characterization and a lawyer's eye for observing telling details. One subject on which the professor displays no diffidence is criminal law. In an academic career centered on criminal prosecution and forensics spanning four decades, he has encouraged development of China's criminal trial procedure and, working with the Innocence Project, has played a part in reopening cases of suspected wrongful conviction.

tion. The professor also helped to launch China's first anti-corruption postgraduate course and has contributed to the composition and editing of over 100 legal textbooks.

Ties to the past

In 1969, 16-year-old He volunteered to work on a farm in northeast China's Heilongjiang Province as an "educated youth," where he drove and maintained tractors. He wrote a poem published in 1971 and a novel which he submitted to contemporary writers who replied contending that he should stick to short stories until he further matured.

Returning to his native Beijing in 1977, He worked as a plumber and met his wife, a doctor. At the talk, he jokes that should he lose his job as a law professor, he could earn more in the "skilled labor" of his former occupation. His in-laws-to-be were not impressed by this plumber with his literary aspirations, so He took and passed a college matriculation exam, despite the backlog of 10 years' worth of student applications within a university system that had only recently reopened following the "cultural revolution" (1966-76). His first choice was economics but poor math grades meant he chose law, a subject with which he was unfamiliar.

The law and He proved a good match.

After graduation, he briefly practiced as a defense lawyer in 1985 before returning to study, obtaining a postdoctoral degree from Northwestern University in Evanston, Illinois, in 1993. His thesis was a comparative analysis of the U.S. and Chinese criminal prosecution systems. While there, He discovered writers from the then blossoming legal thriller genre such as Scott Turow. The fact that titles approximating technical and mundane legalese such as *Burden of Proof*, *Presumed Innocent*, and *Body of Evidence* were shorthand for suspense among the American reading public piqued his interest.

When He came back to China, he decided once more to write novels, to recapture the "dreams of his youth." He also wished to release something that vividly illustrated and explored issues in China's developing criminal justice system. In 1994-98, he wrote five novels and an abridged version of the first was published in *China Youth Daily* in installments.

In the present bit of the freshness of China as a setting for a legal thriller, *Black Holes* is set not in the present but in the 1990s. Before then, He maintains at the Bookworm talk, people didn't know they were poor as everyone was so. Even among his academic peers, it was common to have a second job or to work through one's summer vacation. The stock market for the first

Profile

Born in Beijing in 1953, He Jiahong is professor of law of evidence at the Law School of Renmin University of China, with research interests including criminal investigation, forensic linguistics and the criminal justice system. In addition, he has held part-time positions including deputy director of Renmin University's Research Center for Criminal Justice and director of the university's Institute of Evidence Law.

He has acted as a visiting scholar at third-level institutions in Australia, the United States and Japan, and is frequently the "go-to" expert for overseas media covering legal matters in China, having been interviewed by, among others, the *Financial Times*.



time afforded the Chinese people the opportunity to get rich quick. *Black Holes'* original title was *The Black Holes in Human Nature*, and He reckons that the 1990s and the turbulent "cultural revolution" were two times in which such cracks opened, creating portals that incentivized and facilitated evildoing.

His frustrated economics career notwithstanding, *Black Holes* awarded He had a second opportunity to study something monetarily related. In order to give his work the ring of authenticity, he undertook research in a field with which he was largely unfamiliar: securities trading, in the manner of Hong at the novel's

beginning, he would spend time on Beijing's trading floors, attuning his ear to the lingo of the marketplace, as well as reading finance books.

Plot devices

In the 1990s, the majority of Chinese crime fiction had a police detective as protagonist. Budding author He wanted to do something different and considered a private eye as his central character. Unfortunately, in 1993 the Ministry of Public Security had rescinded private detective licenses and he worried that this may interfere with suspension of disbelief and reflect poorly on his current affairs knowledge.

"They would say, you're a law professor, how could you not know such things?" He jokes at the talk.

The next logical choice was a defense lawyer, a heroic figure in American representation. This too was problematic. In the U.S. criminal justice system, He explains, there are three stages: investigation, prosecution and trial. America's system can be termed adversarial while that of China has traditionally been inquisitorial. While the United States leans on the trial, China focuses on the investigative stage. Back in the 1990s, this meant that a defense lawyer back would come into play much later in China than in the United States every seven days before trial.

This would drastically compress the timeline of even a fast-paced thriller narrative. The author then thought of a conceit buying him (and his narrative's hero) some time, reasoning his character could investigate fictional wrongful convictions and that the pre-trial investigative period could be extended if new evidence came to light. Since the mid-90s, thanks to He and others, this aspect of proceedings has been redressed and as of 2012, a defendant can access a lawyer from the moment a charge is brought against them.

The conceit would also allow He to tackle another issue. Given the thankless nature of the role, up until recently, few Chinese lawyers were drawn to defense work. The writer wished to create a character that would inspire future generations of defense lawyers in his native country. An avid badminton player, He noticed that he did not improve until he played players better than himself. The same, he believes, is true for lawyers. Having defense lawyer skills, according to the author, would lead to corresponding improvement in prosecutors, resulting in a more equitable and balanced legal system. Hong Jun, "the gentleman lawyer," was born.

Self-improvement

Hong and his creator have much in common: They share nominal initials and alma maters, and both work with miscarriages of justice. When asked where he and his literary doppelgänger diverge, He says, "He's taller than me." The writer also adds that Hong enjoys the social aspect of being a practicing lawyer whereas his

I. The Problem of Corruption

- Since the Eighteenth Congress of CPC, November, 2012, the new leadership has been calling for fighting corruption.
- How serious is the problem of corruption in China?



Objective assessment of corruption

- In past ten years, there were some 40000 public officials charged with corruptions each year. While, 46024 officials were charged in 2012, 51306 officials were charged in 2013, 55101 officials were charged in 2014, by the procuratorates.
- Among them, 2000 were above division chief level on the average, while 4040 in 2014, 40.7% up from 2013; 5-7 were above minister-level, while 42 in 2014.

“Hitting tigers”

- From Nov. 2012 to the end of 2015, 145 high ranking officials have been charged for corruption.
- Some of them were the Party/state leaders, such as Su Rong, Xu Caihou, Zhou Yongkang, and Ling Jihua.



衣俊卿

中央编译局原局长
生活作风问题

2013年1月17日



刘铁男

国家发展和改革委员会原副主任、国家能源局原局长
涉嫌严重违纪

2013年5月12日



倪发科

安徽省原副省长
涉嫌严重违纪

2013年6月4日



郭永祥

四川省原副省长、四川省文联主席
涉嫌严重违纪，正接受调查

2013年6月23日



王素毅

内蒙古自治区原省委常委、统战部原部长
严重违纪

2013年6月30日



李达球

广西壮族自治区政协原副主席、区总工会原主席
涉嫌严重违纪

2013年7月6日



蒋洁敏

国资委原主任
涉嫌严重违纪

2013年9月1日



季建业

江苏省南京市委原副书记、原市长
涉嫌严重违纪违法

2013年10月17日



廖少华

贵州省委原常委、遵义市委原书记
涉嫌严重违纪违法

2013年10月28日



陈柏槐

湖北省政协原副主席
涉嫌严重违纪违法

2013年11月19日



郭有明

湖北省原副省长
涉嫌严重违纪违法

2013年11月27日



陈安众

江西省人大常委会副主任
涉嫌严重违纪违法

2013年12月6日

Subjective assessment of corruption

On the list of CPI of Transparency International 2015, Mainland China is numbered 83 (168) with the score of 37.



CORRUPTION PERCEPTIONS INDEX 2013: ASIA PACIFIC

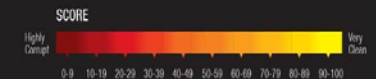


The perceived levels of public sector corruption.

64% score below 50

Top: New Zealand

Bottom: Afghanistan, Korea (North)



RANK	COUNTRY/TERRITORY	SCORE	RANK	COUNTRY/TERRITORY	SCORE
1	New Zealand	91	53	Malaysia	50
5	Singapore	86	80	China	40
9	Australia	81	83	Mongolia	38
15	Hong Kong	75	91	Sri Lanka	37
18	Japan	74	94	India	36
31	Bhutan	63	94	Philippines	36
36	Taiwan	61	102	Thailand	35
38	Brunei	60	114	Indonesia	32
46	Korea (South)	55	116	Nepal	31
			116	Vietnam	31
119	Timor-Leste	30			
127	Pakistan	28			
136	Bangladesh	27			
140	Laos	26			
144	Papua New Guinea	25			
157	Myanmar	21			
160	Cambodia	20			
175	Afghanistan	8			
175	Korea (North)	8			

The 2013 Corruption Perceptions Index measures the perceived levels of public sector corruption in 177 countries/territories around the world. To see the full results go to:

www.transparency.org/cpi
#stopthecorrupt

Subjective assessment (CPI) of corruptions in Mainland China

- 2014, 100, 36 (175)
- 2013, 80, 40 (177)
- 2012, 80, 39 (180)
- 2011, 75, 3.6 (183)
- 2010, 78, 3.5 (181)
- 2009, 79, 3.6 (180)
- 2008, 72, 3.6 (180)
- 2007, 72, 3.6 (179)
- 2006, 70, 3.3 (163)
- 2005, 78, 3.2 (158)
- 2004, 71, 3.4 (146)
- 2003, 66, 3.4 (133)
- 2002, 59, 3.5 (102)
- 2001, 57, 3.5 (91)
- 2000, 63, 3.1, (90)
- 1999, 58, 3.4, (99)
- 1998, 52, 3.5, (85)
- 1997, 41, 2.88, (52)
- 1996, 50, 2.43, (54)
- 1995, 40, 2.16, (41)

The nature of corruption

- Individual corruption
- institutional corruption
- social corruption



II. The anti-corruption strategy

- Fighting yesterday's corruptions or tomorrow's corruptions?
- The focus of fighting corruption is on investigation, punishment, or prevention?



Anti-corruption Strategy in China

Korber Forum, Hamburg, Germany, 06/05/2014



1. Shifting from severe punishment to strict investigation

- The old policy of “executing one to deter one hundred”.
- The deterrent force of punishment and investigation.
- Strict investigation is more effective than severe punishment.

High ranking officials of death penalty (Hu Changqing, Cheng Kejie, 2000)



Strengthening the investigation power

- Sending inspection teams of the Party's central disciplinary committee.
- Establishing more centralized system of the Party disciplinary committee.
- Establishing more centralized system of anti-corruption within the procuratorates.

The new Anti-corruption Bureau General

法制晚报

2013.4.2/星期二

立法要闻

a05

主编/杨京瑞 编辑/郭悦 美编/李明 校对/丁念慈

法律专家何家弘教授提出 治理腐败要创新制度——

基层反贪部门应撤销

本报讯（记者张丽）日前，中国人民大学法学教授、中国行为法学会副会长何家弘接受法晚记者专访时表示：“反腐败要靠制度建设。腐败的原因主要是制度性的，不是个体性的。如果制度设计得好，执行得好，腐败就会很少。”

何家弘建议，反腐制度的创新重要的是要建立集中、强大的反腐败机构。

目前我国的反腐机构力量太分散，机构设置重复，所以一方面人力不足，一方面

又重复劳动。要加强反腐败的力度，首先就必须整合力量。

何家弘曾经在最高人民法院挂职，知道检察院自侦案件在基层有很大难度，所以他认为要想真正严查贪腐，打铁先要自身硬，也就是查办案件的机构要硬。

何家弘提出对反腐部门实现横向和纵向的整合。



将检察系统各部门整合

首先是横向的整合。现在的纪检办不是司法部门，其实是在法律制度之外，但是很多大案都得他们先查，查完了以后证据又不能直接进入司法程序，还得再移送检察院，然后重新再查，重

撤销不能做主的基层反贪部门

还要有一个纵向的整合。何家弘说：“各级检察院受地方政府的领导，因为人事权、财权、物权都在政府这儿，所以肯定得听话。”

从某种意义上说，地方的反贪反渎部门归地方政府领导，领导不让查就很难查，而且地方的

复劳动。

纪检监察部门承担了查办腐败案件的主要工作。

何家弘认为，最好在检察系统内部把反腐败的机构整合起来，然后再把纪检的相关人员充实进来。

各种关系也会成为查办案件的阻碍。这是目前反腐败面临的一个难题。

特别是在基层，反贪反渎部门存在的意义不大。纵向整合就是撤销基层反贪反渎部门，建立一个三级的集中体制。最好在最高检之下

比如检察系统的反贪局、反渎局，还有职务犯罪预防局。这些是法律规定的职务犯罪侦查机构、反腐败的机构，所以应该以这些部门为主体，把这些部门横向整合，有点像大部制。

成立一个集中的反贪腐总局，往下是省级反贪腐局，再往下是地市级反贪腐分局，垂直领导，不受地方政府的掌控。

何家弘表示，有了强有力的查办机构，以官员财产公示为转机，反腐败的力度就大不一样了。

2. Shifting from punishment focus to prevention focus

- Strengthening the supervision within the Party.
- Promoting the transparency of the government.
- Strengthening the checks and audits of public expenditures.
- Promoting the property declaration rules for public officials.

Property declaration by officials

- In 1994, the Standing Committee of NPC planned to make a Property Declaration Law, but failed.
- In 1995, the Party and the Central Government issued an order to require officials above division chief level to report their incomes to internal organic department, but the order became a nominal procedure.

Reforms and experiments

- Since 2009, some local governments started reforms on trial bases for establishment of the property declaration rules, such as in Xinjiang, Zhejiang, Sichuan and Ningxia. However, they are not real open declarations.
- In 2010, the Party and the Central Government issued an order to require officials to report more things internally, including their investments in real estates and securities.
- In the end of 2012, some cities in Guangdong were going to start the declaration on trial basis.
- The deadlock of the declaration.

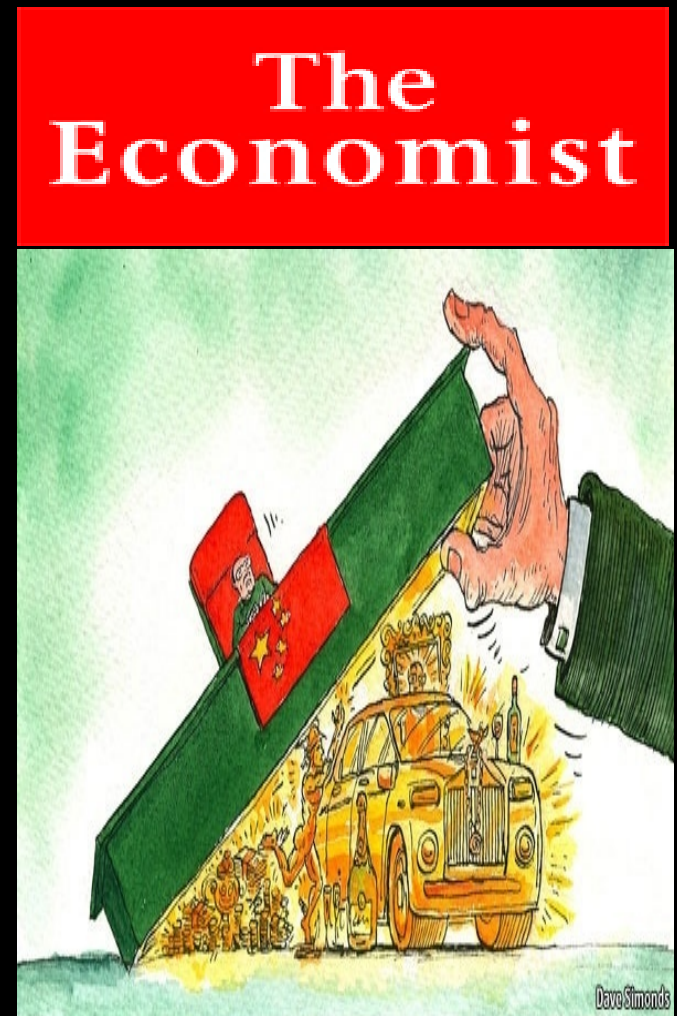
How to breakthrough the deadlock?

- An novel idea: Conditional deferment of investigation (amnesty to corrupt officials) in exchange for the declaration law, Legal daily, 2008.



The fight against corruption: Life and death struggle -- Party officials are urged to come clean about their wealth. (Dec 8th 2012 BEIJING)

...But for those less inclined to disclose their assets, He Jiahong, a scholar at Renmin University in Beijing, has suggested a solution in the form of an amnesty. Mr He proposes that officials be given until the end of 2013 to disclose their family assets publicly, and that they get an amnesty for any acts of corruption committed to acquire those assets. Mr He drew inspiration from an amnesty granted to police in colonial Hong Kong in 1977 as part of an effort to root out extensive corruption related to local mafia. “In general we have been fighting yesterday’s corruption,” he says. It is more important for society to fight “tomorrow’s corruption”.



China is urged to give amnesty to two million corrupt officials

By Tom Phillips in Beijing

CHINA must pardon two million corrupt Communist Party officials to avoid falling into a "vicious cycle" of sleaze that could ultimately lead to the government's collapse, a leading legal scholar and author has warned.

Xi Jinping, the Chinese president, has been waging a determined offensive against corruption since taking power in late 2012, purging a succession of powerful political and military leaders.

Yesterday, Li Keqiang, the prime minister, marked the end of China's annual party-controlled parliament with a promise to "eliminate the breeding ground for corruption", adding: "All civil servants must enhance their self-discipline. Government power must only be used for public good, not personal gain."

However He Jiahong, a respected legal scholar and author from Beijing's Ren-

Prof He Jiahong: warned that China faced falling into a vicious cycle of corruption



min University, said two million officials had engaged in acts of corruption, and that investigating them all was not possible since it would take 40 or 50 years.

If China was serious about winning its war on corruption, it needed to focus on preventing future crimes rather than those that had already been committed, he said.

In several recent academic papers, Prof He has called for a form of amnesty or pardon for corrupt officials.

"We set a deadline - let's say December 31, 2015. If the official declares all their property truthfully then we will not investigate the source of the property," he told *The Daily Telegraph*.

Under his "deferred investigation policy", officials' financial affairs would not be scrutinised if they came clean about their ill-gotten gains and promised to behave. Recidivists would face immediate investigation.

A "special account" could be set up for officials who had amassed such stupen-

dous amounts of property that they were embarrassed to come clean, Prof He proposed. "Donations" to the account could be spent on poverty relief and anti-corruption initiatives.

Prof He said he hoped his proposals would "indirectly influence" policymaking but did not know if they been raised at the annual National People's Congress, which ended yesterday.

He Jiahong, 61, splits his time between blogging, writing papers for legal journals and producing bestselling novels about the travails of Hong Jun, a "gentleman lawyer" based loosely on himself.

Some have dismissed his ideas as politically unworkable, but the academic is not a lone voice.

"Though many dirty officials have been caught in the past two years, the nation is far from rooting out the scourge," an editorial in the influential magazine *Caixin* warned this week. "For every dirty official caught, another takes his place."

A "twin focus on enforcement and prevention" was needed if the war on corruption was to be successful, the magazine added, calling for "the establishment of an accountability system that ensures effective oversight of those in power".

While Mr Xi has made the war on corruption one of his administration's central themes, people have been detained or thrown in jail for publicly demanding that officials disclose their assets.

Friends had warned Prof He that speaking out might be dangerous, but he shrugged off the risks.

"I'm not saying we will overthrow the government. No. I just want to make things better and I think with my research and studies over the past few years this is the right way and a good way to solve the problem."

"Otherwise we will fall into the vicious cycle of corruption, fighting corruption, then more corruption and then collapse of government, disaster."

In February, Prof He published two articles about corruption on his blog - one examining the cultural reasons for the phenomenon, the other focusing on its "institutional" roots.

The first went viral, receiving more than 640,000 hits in two days. But the second piece vanished almost immediately, wiped from the internet by Beijing's censors.



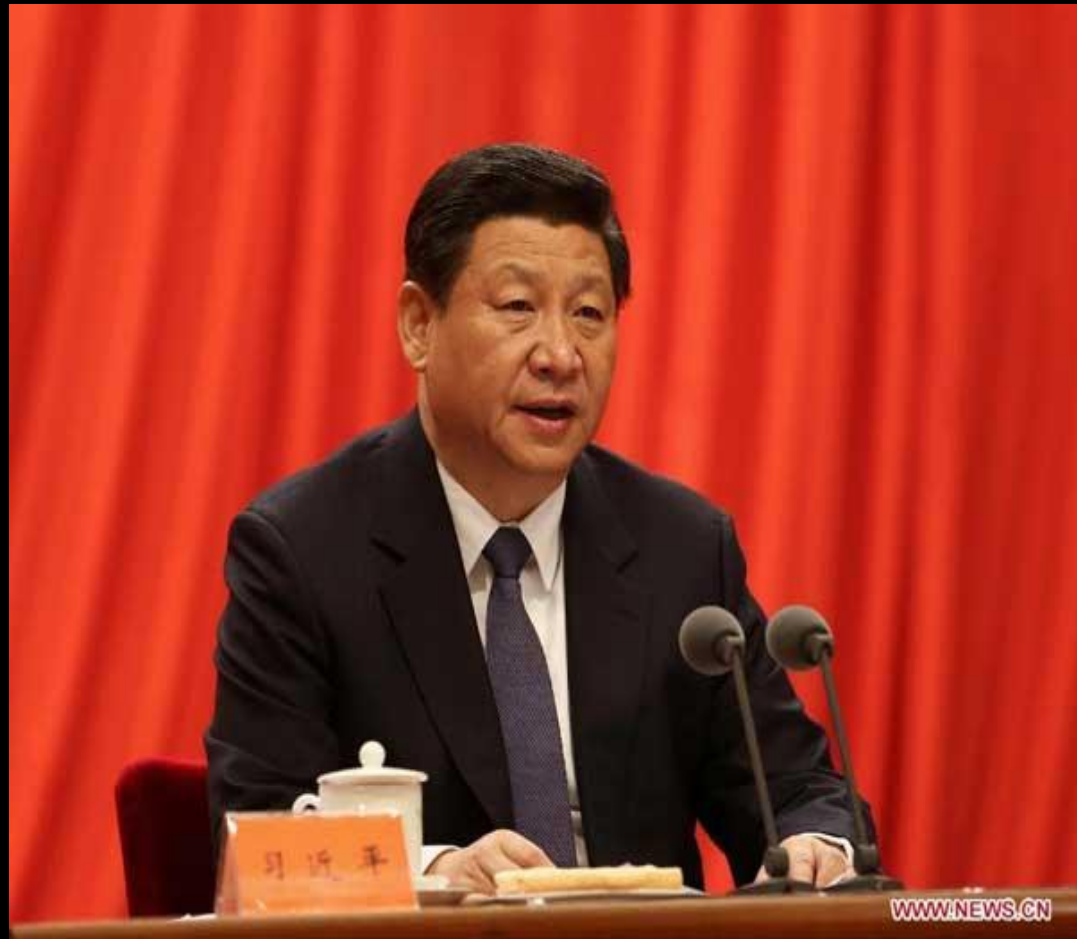
Stewards in traditional dress for the 12th National People's Congress in Beijing

3. Shifting from moral education to legal regulation

- Human nature and human nurture.
- Reform and open up policy, rapid economic development, and the degradation of morality in the society.
- From changing people's thoughts to changing people's behaviors.
- From rule of man to rule by law, and to rule of law.

"Power should be restricted by the cage of regulations."

- China's President Xi Jinping has reiterated his determination to fight corruption, saying the fight was grim and complicated but that the party will maintain great pressure to root out official graft.
- Xi Jinping made the remarks at a meeting held by China's anti-corruption watchdog, the Central Commission for Discipline Inspection, Jan. 15, 2014.



The Rule of Law in China

- The Fourth Plenary Session of the 18th CPC Central Committee, Oct. , 2014.
- The Communique lays out the general objective of building "the socialist rule of law with Chinese characteristics" .



Rule of Law: China is still a developing country



Thank you all!

